



Office of the Attorney General

State of Texas

March 30, 1992

DAN MORALES

ATTORNEY GENERAL

Honorable Peter C. Speers III
District Attorney, 9th Judicial District
Courthouse
Conroe, Texas 77301-2802

OR92-132

Dear Mr. Speers:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15256.

You have received a request for access to a certain presentence investigation report. Specifically, the requestor seeks access to the "Pre-sentence Investigation Report on Mr. James D. Perdue." You claim that the requested information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(3). You also assert that the requested information constitutes records of the judiciary and is thus not subject to Open Records Act.

After defining "governmental body" in section 2(1), the Open Records Act also provides in subsection 2(1)(H) that "the Judiciary is not included within this definition." In Open Records Decision No. 572 (1990) (copy enclosed), this office held that in conducting investigations and preparing reports for the court, a county personal bond program was acting as an arm of the court and that those records were thus not subject to the Open Records Act by virtue of the exception for records of the judiciary. In Open Records Decision No. 236 (1980) (copy enclosed), this office held that certain probationers' records generated by an adult probation officer at the direction and under the supervision of the court were records of the judiciary and thus not subject to the Open Records Act.

Article 42.12 of the Code of Criminal Procedure governs adult probation. Section 1 of that article provides:

It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for

determining when the imposition of sentence in certain cases shall be suspended, the conditions of the probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government

Section 9 of that article relates specifically to presentence investigations and provides, in part:

(a) Before the imposition of sentence by the court in a felony case, . . . the court shall direct a probation officer to report to the court in writing on the circumstances of the offense with which the defendant is charged

Access to presentence investigation reports is provided for in section 9(j):


The court by order may direct that any information and records that are not privileged and that are relevant to the report required by Subsection (a) of this section be released to the officer conducting the presentence investigation The court may also issue a subpoena to obtain that information. The report and all information obtained in connection with the presentence investigation are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the court for the effective supervision of the defendant. . . .

Subsections (d), (e), (f), and (g) of article 42.12 provide for access to reports by defendants and their attorneys, state's attorneys, and penal institutions.

In this instance, we believe that the reasoning employed in Open Records Decision Nos. 572 and 236 is applicable here. Article 42.12 of the Code of Criminal Procedure clearly places the supervision of probation officers and the preparation of presentence investigation reports in the jurisdiction of the courts. Moreover, it clearly provides that access to the reports is a matter for the courts. Accordingly, presentence investigation reports are records of the judiciary and thus not subject to the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-132.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Enclosures: Open Records Decision Nos. 572, 236

Ref.: ID# 15256

cc: Mr. W. Gene Human, Jr.
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